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97-565

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

## INTERLOCAL AGREEMENT

### I. PARTIES

#### A. Address

**THIS INTERLOCAL AGREEMENT** ("Agreement") is made by and between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and home-rule city of the State of Texas principally situated in Harris County, acting by and through its governing body, the City Council; the **HOUSTON INDEPENDENT SCHOOL DISTRICT** ("HISD"), located at 3830 Richmond Avenue, Houston, Texas 77027; and the **REINVESTMENT ZONE NUMBER FOUR, CITY OF HOUSTON, TEXAS** ("Village Enclaves Zone"), a reinvestment zone created by the City of Houston pursuant to Chapter 311 of the Texas Tax Code, acting by and through its Board of Directors. This Agreement is made pursuant to Chapter 791 of the Texas Government Code and Section 311.013 of the Texas Tax Code.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other parties, are as follows:

City  
  
Director of Finance and  
Administration Department  
or Designee  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251

HISD  
  
Houston Independent School District  
Hattie Mae White Administration Building  
3830 Richmond Avenue  
Houston, Texas 77027-5838

## Village Enclaves Zone

Village Enclaves Reinvestment Zone  
HH&W Consultants  
11743 W. Bellfort #309  
Stafford, Texas 77477

### **B. Index**

The City, HISD and the Village Enclaves Zone hereby agree to the terms and conditions of this Agreement. This Agreement consists of the following sections:

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Exhibit "A" — City of Houston Ordinance No. 96-1014

Exhibit "B" — City of Houston Ordinance No. 97-479

### **C. Parts Incorporated**

All of the above described sections and documents are hereby incorporated into this Agreement by this reference for all purposes.

IN WITNESS HEREOF, the City, HISD and the Village Enclaves Zone have made and executed this Agreement in multiple copies, each of which is an original.

CITY OF HOUSTON

Mayor

Date

HOUSTON INDEPENDENT SCHOOL DISTRICT

President, Board of Trustees

Date

ATTEST/SEAL:

City Secretary

Date

Secretary, Board of Trustees

Date

COUNTERSIGNED:

City Controller

Date

Superintendent of Schools

Date

APPROVED:

Director

Date

Department of Finance and Administration

APPROVED AS TO FORM:

Attorney

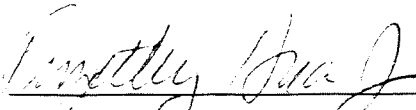
Date

APPROVED AS TO FORM:

Sr. Assistant City Attorney Date


L.D. No. 619603102

REINVESTMENT ZONE NUMBER FOUR,  
CITY OF HOUSTON, TEXAS (Village Enclaves Zone)



By: Timothy J. Hall Date 8/13/97  
Title: Chairman, Board of Directors

ATTEST/SEAL:

 8-13-97

By: \_\_\_\_\_ Date \_\_\_\_\_  
Title: Secretary, Board of Directors

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## II. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set out below:

"Administrative Costs" means the costs of organizing the Village Enclaves Zone, the costs of operating the Village Enclaves Zone and the imputed administrative costs associated with the Village Enclaves Zone, including reasonable charges, but not to exceed \$25, 000 per year, for the time spent by employees of the City in connection with the implementation of the Project Plan.

"Agreement" means this agreement between the City, HISD and the Village Enclaves Zone.

"Agreement Term" is defined in Section VI.

"Captured Appraised Value" means the captured appraised value of the Village Enclaves Zone as defined by Chapter 311, Texas Tax Code.

"City" is defined in Section I of this Agreement and includes its successors and assigns.

"City Tax Increment" means the amount of the City tax levy on the Captured Appraised Value deposited into the Tax Increment Fund.

"Countersignature Date" means that date shown as the date countersigned by the City Controller on the signature page of this Agreement.

"Developer Debt" means the amount of money required to repay any outstanding obligation incurred pursuant to an agreement between the City, the Village Enclaves Zone and Enclave Partners, Ltd. with respect to the area described in Exhibit A and to pay principal, interest, and redemption price on any obligation to the holders of bonds issued to pay project costs or to repay obligations to or reimburse Enclave Partners, Ltd. for project costs; provided however, that HISD shall not be obligated to pay HISD's share of tax increments on Developer Debt in excess of the

amount of project costs, including financing, approved by the City Council in the initial Project Plan for the development of the area described in Exhibit "A."

"HISD" is defined in Section I of this Agreement and includes its successors and assigns.

"HISD Tax Increment Participation" means the amount of the HISD tax levy on the Captured Appraised Value which HISD agrees to contribute to the Village Enclaves Zone pursuant to Subsections A and B of Section IV of this Agreement.

"Project Plan" means the project plan and reinvestment zone financing plan for the Village Enclaves Zone adopted by the board of directors of the Village Enclaves Zone and approved by the City Council of the City.

"Village Enclaves Area" shall mean the Village Enclaves area of the City and neighboring areas, as more particularly described in Ordinance No. 96-1014 and Ordinance No. 97-479.

"Village Enclaves Zone" means Reinvestment Zone Number Four, City of Houston, Texas (Village Enclaves), created by the City on September 25, 1996, by Ordinance No. 96-1014, attached as Exhibit "A," and enlarged by the City on May 7, 1997, by Ordinance No. 97-479, attached as Exhibit "B," and includes its successors and assigns.

"Tax Increment Fund" means the tax increment fund created by the City in the City Treasury for the Village Enclaves Zone.

Otherwise, the terms used herein shall have the meanings ascribed to them in Chapter 311, Texas Tax Code, or the Texas Education Code, as applicable.

### **III. BACKGROUND**

By Ordinance No. 96-1014, adopted September 25, 1996, the City created the Village Enclaves Zone for the purposes of development in the Village Enclaves Area. On May 7, 1997,

the City enlarged the boundaries of the Village Enclaves Zone pursuant to Ordinance No. 97-479. The City currently contributes tax increments produced in the Village Enclaves Zone to the Tax Increment Fund. HISD owns property in the Village Enclaves Zone on which it plans to construct an educational facility, the Westside High School. HISD desires to participate in the Village Enclaves Zone in consideration for the agreements set forth below.

#### **IV. OBLIGATIONS OF HISD**

##### **A. Tax Increment Participation by HISD**

For and in consideration of the agreements of the parties set forth herein, and subject to the remaining subsections of this section, HISD agrees to participate in the Village Enclaves Zone by contributing one hundred percent (100%) of the tax increment produced in the Village Enclaves Zone attributable to HISD to the Tax Increment Fund during the term of this Agreement.

##### **B. Tax Increment Limitation**

Subject to the limitations set out in this Agreement, the amount to be contributed by HISD (the "HISD Tax Increment Participation") is the amount of taxes collected by HISD each year during the term of this Agreement at an HISD tax rate of \$1.384 per \$100 valuation on the Captured Appraised Value. If the HISD tax rate is less than \$1.384 per \$100 valuation, then the HISD Tax Increment Participation is the total amount of taxes collected by HISD at the actual tax rate of HISD on the Captured Appraised Value. Taxes collected by HISD on the Captured Appraised Value as a result of an HISD tax levy at a tax rate greater than \$1.384 per \$100 valuation shall be retained by HISD.

HISD's Tax Increment Participation and obligation to participate in the Village Enclaves Zone shall be restricted to its tax increment collected on the Captured Appraised Value in the

Village Enclaves Zone. HISD shall not be obligated to pay its HISD Tax Increment Participation from other HISD taxes or revenues or until the HISD Tax Increment Participation in the Village Enclaves Zone is actually collected. The obligation to pay the HISD Tax Increment Participation shall accrue as taxes representing the HISD tax increment are collected by HISD and payment shall be due on the first day of each calendar quarter. The City and the Village Enclaves Zone agree that no interest or penalty will be charged to HISD.

**C. Shared Educational Facilities**

HISD agrees that the City will be permitted to use the grounds and facilities of the educational facilities constructed with or financed by monies from the Tax Increment Fund, and that HISD and the City will negotiate use agreements for such use. HISD will allow the City to use, at no cost to the City other than proportionate utility, maintenance and building personnel costs of HISD, ballfields, tennis courts and other outdoor recreational areas, indoor recreational areas, lunchrooms, and other assembly areas of the educational facilities constructed with or financed by monies from the Tax Increment Fund for municipal recreational and meeting purposes, at all reasonable times to be agreed to by the City and HISD that HISD is not conducting school or other related activities at the facilities.

**D. Changes in Applicable Laws**

In the event that the laws applicable to HISD or tax increment reinvestment zones are changed so that the participation of HISD in the Village Enclaves Zone decreases the amount of state and local funds available to HISD, the City and the Village Enclaves Zone agree that the HISD Tax Increment Participation shall be decreased by the amount of the decrease in HISD state and local funding as a result of HISD's participation in the Village Enclaves Zone.



**E. Expansion of Village Enclaves Zone**

The obligation of HISD to participate in the Village Enclaves Zone is limited to the area described in Exhibits "A" and "B" attached hereto. HISD's participation shall not extend to the tax increment on any additional property added to the Village Enclaves Zone by the City unless HISD approves the participation.

**F. Board of Directors**

HISD shall have the unequivocal right to appoint to and maintain one (1) member on the Village Enclaves Zone Board of Directors. HISD may also appoint and maintain as many nonvoting ex officio members on the Village Enclaves Board of Directors as HISD may desire.

**V. OBLIGATIONS OF CITY AND VILLAGE ENCLAVES ZONE**

**A. Street Right of Way**

To the extent requested by HISD, the City and the Village Enclaves Zone agree that monies from the Tax Increment Fund shall be used, at no cost to HISD, to pay to the City the following costs that otherwise would be incurred by HISD with respect to the construction and operation of any educational facilities constructed by or on behalf of HISD in the Village Enclaves Zone pursuant to the Project Plan: (a) the cost of abandonment of any street right of way by the City on behalf of HISD and (b) the cost of water and sewer utility connections and construction outside the boundaries of HISD property (collectively, "School Support Expenses"). The City shall use the proceeds obtained from payments made pursuant to the preceding sentence for infrastructure improvements or other projects identified in the Village Enclaves Zone Project Plan.

**B. Project Plan**

The parties agree that the Superintendent of Schools of HISD shall be permitted to review

and comment upon the Village Enclaves Zone Project Plan and any amendments thereto before the Project Plan or any amendments are submitted to the City Council for City approval. Any Village Enclaves Zone Project Plan shall provide for the construction of educational facilities within or to serve the Village Enclaves Zone.

**C. Financing and Construction of Educational Facilities**

The City shall deposit the HISD Tax Increment Participation and the City Tax Increment into the Tax Increment Fund. Two-thirds of HISD's Tax Increment Participation and two-thirds of the City Tax Increment (collectively, "School Facilities Tax Increment Component") paid into the Tax Increment Fund shall be allowed to accumulate in the Tax Increment Fund except to the extent needed to pay Developer Debt, Administrative Costs and School Support Expenses. At the time the School Facilities Tax Increment Component produces an aggregate tax increment of \$4 million for one year after payment of Developer Debt, Administrative Costs, and School Support Expenses (the "Trigger Amount"), the Village Enclaves Zone and the City agree to proceed with the financing, design and construction of HISD school facilities on property owned by HISD in the Village Enclaves Zone; provided, however, that the cost of the HISD school facilities to be financed pursuant to this Agreement shall not exceed \$45 million plus cost of financing. Payments from the School Facilities Tax Increment Component for the financing, design and construction of HISD school facilities shall be made after deducting Developer Debt, Administrative Costs and School Support Expenses. The balance of the School Facilities Tax Increment Component at the time the annual aggregate increment attributable to HISD and the City reaches the Trigger Amount, less any amounts obligated or anticipated to be necessary to pay Administrative Costs, Developer Debt and School Support Expenses, shall be applied to the financing, design and

construction of the HISD educational facilities. Two-thirds of any City Tax Increments deposited annually into the Tax Increment Fund in excess of the amount needed to pay Developer Debt, Administrative Costs and School Support Expenses and costs incurred for HISD educational facilities may be used to pay other project costs, including any bonds issued to pay project costs. Two-thirds of any HISD Tax Increment Participation deposited annually into the Tax Increment Fund in excess of the amount needed to pay Developer Debt, Administrative Costs and School Support Expenses shall be applied to the costs of HISD educational facilities.

*2nd alternative?* As an alternative to the financing described in the preceding paragraph, at any time at the sole option of HISD, the Village Enclaves Zone and the City agree that they will cooperate with the party of HISD's choice to finance and construct school facilities. Such HISD option shall also include construction and financing by HISD with its own funds and/or construction and financing through an alternate source chosen by HISD and a financing procedure as determined by HISD. The School Facilities Tax Increment Component paid into the Tax Increment Fund after the date HISD exercises its option, after deduction of Developer Debt, School Support Expenses and Administrative Costs, will be used to pay the costs of educational facilities or principal and interest on the debt incurred by HISD, or the party chosen by HISD, to finance and construct the school facilities ("School Facilities Debt"); provided, however, that the School Facilities Debt to be financed pursuant to this Agreement shall not exceed \$45 million plus the cost of financing. If the School Facilities Tax Increment Component is not adequate to pay the School Facilities Debt, HISD shall pay the deficit ("Debt Deficit") from HISD available funds. HISD shall be repaid the Debt Deficit plus interest at the School Facilities Debt interest rate, but not to exceed \$45 million plus the cost of financing including interest on the Debt Deficit, from the first

available School Facilities Tax Increment Component, after deduction of School Facilities Debt, School Support Expenses, any Developer Debt and annual Administrative Costs.

If the Village Enclaves Zone and the City fail to fulfill their obligations with respect to HISD's exercise of either of the foregoing options, HISD shall be entitled to withhold its tax increment (less HISD's pro rata portion of any Developer Debt, Administrative Costs and School Support Expenses) until the Village Enclaves Zone and the City perform the option selected by HISD.

All monies used to finance and construct HISD school facilities shall come from or be financed by the Village Enclaves Zone School Facilities Tax Increment Component. The City shall never be obligated to expend any funds other than funds derived from the Village Enclaves Zone to finance and construct HISD school facilities.

#### **D. Priority of Payments**

The primary purpose of the Village Enclaves Zone is to provide for the development of the property originally included in the Village Enclaves Zones as shown in Exhibit "A" and for the development of shared educational facilities to be owned and operated by HISD in the Village Enclaves Zone as enlarged. Payments from the Tax Increment Fund for the shared educational facilities shall be made pursuant to the priorities and deductions contained in Subsection C of this Section V. In addition, at any time upon the initiation of construction of shared educational facilities to be financed pursuant to one of the two options available to HISD pursuant to Subsection C of this Section V, the City and the Village Enclaves Zone shall not enter into any new obligation, other than Developer Debt, to be paid with revenues from the Tax Increment Fund that has priority over the obligation to finance the shared educational facilities without the

prior consent of HISD. Notwithstanding the foregoing, if HISD does not exercise the option to finance educational facilities pursuant to this paragraph within 24 months of the effective date of this Agreement, the City and the Village Enclaves Zone shall have the right to enter into any agreements they deem necessary to implement the Project Plan and to pledge the City Tax Increment to the payment of obligations incurred under these agreements. In such event, the payments under any such agreement shall have priority over the obligation to pay the City Tax Increment for shared educational facilities.

**E. Control of Educational Facilities**

The parties agree that all decisions regarding location, construction and educational content of HISD educational facilities in or to serve the Village Enclaves Zone will be in the control of HISD. Nothing in this subsection shall be construed to relieve HISD of the obligation to comply with all City ordinances and regulations applicable to the construction and operation of any educational facility by or on behalf of HISD.

**VI. TERM AND TERMINATION**

**A. Agreement Term**

This Agreement shall become effective as of the date of the final signature hereto, and shall remain in effect until December 31, 2017. HISD shall have the right to terminate this Agreement upon the payment of all project costs as identified in or contemplated by the initial Project Plan for the Village Enclaves Zone approved by the City Council, including any bonds issued to pay project costs and/or the reimbursement of any person for the payment of project costs; Developer Debt; annual Administrative Costs; School Support Expenses; School Facilities Debt; Debt Deficit and any other obligation to which HISD has agreed to pledge all or a portion of its Tax Increment

Participation.

The first payment of increment taxes by HISD under this Agreement shall be for those taxes levied by HISD in the year 1997 and the last payment by HISD under this Agreement is for those taxes levied by HISD in the year 2016.

## **VII. MISCELLANEOUS**

### **A. Severability**

In the event any term, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either HISD, the City or the Village Enclaves Zone in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

In the event any term, covenant or condition shall be held invalid and affects in any manner the limitations on HISD's contributions or participation, then this Agreement shall be void as to HISD and HISD shall have no liability for any incremental or other payments as may otherwise be provided for in this Agreement.

### **B. Entire Agreement**

This Agreement merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are no other agreements, assurances, conditions, covenants (express or implied) or other terms with respect to the covenants, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

**C. Written Amendment**

Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of each party.

**D. Notices**

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third (3rd) day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed in Section I of this Agreement or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

**E. Non-Waiver**

Failure of any party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

**F. Assignment**

No party shall assign this Agreement at law or otherwise without the prior written consent of the other parties.

No party shall delegate any portion of its performance under this Agreement without the written consent of the other parties.

**G. Successors**

This Agreement shall bind and benefit the parties and their legal successors. This Agreement does not create any personal liability on the part of any officer or agent of the City or of any trustee, officer, agent or employee of HISD.

**H. No Waiver of Immunity**

No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of its execution of this Agreement and performance of the covenants contained herein.